IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

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AMERICAN UNITED LIFE INSURANCE COMPANY, EUGENE P. BERRY, Commissioner of Insurance of the State of Michigan, as Permanent Liquidating Receiver of THE AMERICAN LIFE INSURANCE COMPANY of Detroit, Michigan, and DAN E. LYDICK, Receiver of THE AMERICAN LIFE INSURANCE COMPANY of Detroit, Michigan, in Texas,
Petitioners,

vs.

No. 667

CHARLES R. FISCHER, Commissioner of Insurance of the State of Iowa, as Receiver for THE AMERICAN LIFE INSURANCE COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND SUPPORTING BRIEF

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PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND SUPPORTING BRIEF

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, American United Life Insurance Company, and Eugene P. Berry, Commissioner of Insurance of the State of Michigan, as Permanent Liquidating Receiver of the American Life Insurance Company of Detroit, Michigan, and Dan E. Lydick, Texas Receiver of the American Life Insurance Company of Detroit, Michigan, respectfully pray for a writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit to review a judgment of that Court entered July 30, 1942, and with respect to which a petition for rehearing was denied Sep-

tember 22, 1942, with opinion. The Texas receiver joins in this petition pro forma, having been an appellant in the court below and desiring to avoid a re-alignment of parties. The rights and duties of the Texas Receiver were correctly adjudicated after the opinion on petition for rehearing. The transcript of the record in the case, including the proceedings in said Circuit Court of Appeals is furnished herewith in accordance with the rules of this Court.

SUMMARY STATEMENT OF THE MATTER INVOLVED

This case was instituted and summons served under Judicial Code, Sec. 57, (Title 28, Section 118, U.S.C.A.) in the United States District Court for the Southern District of Iowa by respondent, upon authority and order of the District Court of Polk County, Iowa (R. ~~369-372~~) 157

The property involved consisted of bonds, mortgages, promissory notes, etc. of a face value in excess of $3,600,000.00.

Pursuant to certain contracts of reinsurance of a domestice life insurance company of the State of Iowa, reinsured by a Michigan company, certain property was deposited with the Insurance Commissioner of the State of Iowa under the terms of the contract. Prior to the reinsurance, the Iowa company had on deposit with the Insurance Commissioner of the State of Iowa property deposited pursuant to the Iowa laws relative to domestic companies.

Pursuant to a bill of complaint filed under the Michigan Statute for the liquidation of insolvent life insurance companies, on April 12, 1938 in the Ingham County Circuit Court, the Insurance Commissioner of the State of Michigan was appointed Statutory Receiver of the Michigan Company.

Pursuant to a bill of complaint filed in the State District Court of Polk County, Iowa, on June 17, 1938, the

Insurance Commissioner of Iowa was appointed Receiver of the Michigan company in Iowa.

Pursuant to a bill of complaint filed May 29, 1938, in the District Court of Tarrant County, Texas, 96th Judicial District, Dan E. Lydick was appointed receiver of the property of the Michigan company within the State of Texas on August 28, 1938.

The complaint in this cause was filed on January 2, 1940, in the United States District Court for the Southern District of Iowa by the Iowa Receiver sought a decree to determine the status of the property deposited in Iowa.

The Michigan receiver claimed title to all the assets of the Michigan company by virtue of the Life Insurance Company Liquidation Statute of the State of Michigan, being Section 12266 of the Compiled Laws of Michigan, 1929.

The American United claimed title by virtue of a re-insurance agreement made with the domiciliary receiver on the 17th day of November, 1939, wherein it succeeds to the title of all the assets in the receivership.

The District Court by its decree granted the relief asked (R. 197). This decree was reversed by the Circuit Court of Appeals (117 Fed (2d) 811

Upon appeal to this Court, by decision dated January 5, 1942, reported in 314 *U. S.* 549, 62 Sup. Ct. 380, 86 L. Ed. 328, the cause was reversed and remanded to the Circuit Court of Appeals for the Eighth Circuit to determine, "What rights under Iowa law, Iowa and its receiver had to the securities and the collections thereon * * *."

The opinion of the Circuit Court of Appeals to which this petition for writ of certiorari is directed was handed down July 30, 1942, and was modified by a written opinion on petition for rehearing, handed down September 22, 1942. The decree of the District Court was modified and affirmed by the opinion of July 30, 1942 of the Circuit Court of Appeals for the Eighth Circuit in holding,

> "We therefore hold that, under the law of Iowa, title to the securities of the Michigan company, maintained with and in the hands of the Iowa Insurance Commissioner, at the time the Michigan company became insolvent, in fulfillment of its obligation under the reinsurance agreement with the old Iowa Company, has become vested in the State of Iowa, and that the Iowa Insurance Commissioner, on behalf of the State, in his official capacity and in his capacity as statutory receiver, has the right, independent of any domiciliary or ancillary receivership of the Michigan company, to administer such securities for the benefit of the policy holders of the old Iowa company."

and as modified by the opinion of September 22, 1942,

> "if the Iowa Commissioner, in his official capacity or in his facilitating status as receiver, found it necessary to resort to the courts of another state, he obviously would subject himself to the public policy of that state. 'He must submit * * * to the mandate of the sovereignty that has the physical control of what he would reduce to his possession.' 294 U. S. at page 214. Such other state in turn, as a matter of full faith and credit, would be required to recognize the status and rights created by Iowa law, 'with whatever rights and privileges accompany such recognition according to its own law'. Id., at Page 215."

FACTS

This controversy arises out of the insolvency of the American Life Insurance Company of Detroit, Michigan. The subject matter of the controversy is the right to possession for administration of securities of the face value of $3,600,000.00 deposited with the Insurance Commissioner of the State of Iowa, pursuant to Exhibits A, B and C (R. 65, et seq.) which were contracts whereby the American Life Insurance Company of Detroit, Michigan, reinsured all the business of the American Life In-

surance Company of Des Moines, Iowa. Exhibit A was executed on July 30, 1921. On that date the Iowa Company had on deposit with the Insurance Commissioner of Iowa securities of the face value of $2,930,840.71 pursuant to the requirements of the Iowa statutes governing domestic life insurance companies. This amount represented the net cash value or legal reserve of the policies then in force of the Iowa company (R. 56). Supplementary contracts, Exhibits B and C, were entered into between the companies on December 27, 1922 and October 24, 1923 to complete the transaction. Whereupon the Iowa Company was dissolved (R. 57).

Prior to the execution of Exhibit A, all policies of insurance issued by the Iowa company were signed and delivered at the home office of the company in Des Moines, Polk County, Iowa (R. 52). Each had printed on the face of the contract in large letters, "The full reserve on this policy is secured by a deposit of approved securities with the State of Iowa," (Exhibit F—R. 80). In Section 6, General Provisions of the policy contract, is the provision, "The legal reserve on this policy shall be invested in approved securities and deposited with the State of Iowa as required by law," (Exhibit F—R. 80). The Michigan company did not rewrite the policies, but issued each policyholder a document entitled "Certificate of Assumption," which provided as follows: "This is to certify that the above numbered policy issued by the American Life Insurance Company of Des Moines, Iowa, has been assumed according to its terms, provisions and values by the American Life Insurance Company, Detroit, Michigan, and the American Life Insurance Company, Detroit, Michigan, will carry out all the provisions of said policy and perform all of the obligations therein contained as fully as the same would or should have been performed by The American Life Insurance Company of Des Moines, Iowa, * * *" (Exhibit E—R. 99).

Between the time of the execution of Exhibit A, July 30, 1921, and the execution of Exhibit C, October 24, 1923, new business was continued to be written in the states in which the Michigan company was not admitted by the

Iowa company. The policies written during this interim did not carry the above quoted provisions, but that business is included in the reinsured business and is represented by the deposit continued by the Michigan company with the Insurance Commissioner of the State of Iowa.

The written agreements between the two companies, Exhibits A, B and C, each contained the following provisions:

"5. The transfer hereby made is subject to the requirements of the statutes of the State of Iowa, relative to the deposit with the Commissioner of Insurance of that State of securities representing the net cash value of outstanding contracts of life insurance, endowments, or annuities, and it is understood that many of the securities hereby transferred are now in the custody of said Commissioner of Insurance of the State of Iowa by virtue of deposits made in pursuance of such statutes.

"6. It is further agreed by said American Life Insurance Company, Detroit, Michigan, that the deposits required by the laws of the State of Iowa to be made with the Commissioner of Insurance on all contracts of life insurance, endowments, or annuities issued by said American Life Insurance Company, of Des Moines, Iowa, and hereby reinsured, will be now and hereafter maintained at all times, both in amount and character of securities, as would have been required of said American Life Insurance Company of Des Moines, Iowa, under the laws of said State of Iowa. The amount of such deposit required shall be determined by valuation of policies to be made on January fist and July first of each year" (R69-70).

The Michigan Company maintained the deposit and regularly made the necessary adjustments to maintain the amounts to equal the net equity or legal reserves for the Iowa policies from 1921 until the insolvency proceedings against it on April 12, 1938.

Pursuant to bill of complaint filed on April 12, 1938 the Commissioner of Insurance of Michigan took possession of the Michigan company as custodian, and on June 7,

1938 the Circuit Court for the County of Ingham, Michigan, appointed the Commissioner temporary receiver, all pursuant to the Michigan statute governing the liquidation of domestic insurance companies which reads as follows:

> "12266. *Liquidation; order, filing, contents; powers of commissioner.* Sec. 4. If, on like application and order to show cause, and after a full hearing, the court shall order a liquidation of the business of such corporation, such liquidation shall be made by and under the direction of the commissioner of insurance who may deal with the property and business of such corporation in his own name as commissioner or in the name of the corporation, as the court may direct, and shall be vested by operation of law with title to all the property, contracts and rights of action of such corporation as of the date of the order so directing him to liquidate. The filing or recording of such order in any record office of the state, shall impart the same notice that a deed, bill of sale or other evidence of title duly filed or recorded by such corporation would have imparted. * * *"

The order of the court appointing the temporary receiver contains the following: "Commissioner of Insurance of the State of Michigan be and is hereby appointed temporary receiver of said defendant company and all and singular the property and assets of every nature wherever situated, held, owned or controlled by the defendant company, * * *" (R. 94-96).

The management of the company took an appeal to the Supreme Court of the State of Michigan, which affirmed the decree of the Ingham County Circuit Court. Thereupon on September 16, 1939, the Circuit Court for Ingham County, Michigan, entered an order appointing the Commissioner of Insurance of the State of Michigan Permanent Receiver. That order contains the following: "Commissioner of Insurance of the State of Michigan is hereby appointed Permanent Liquidating Receiver of the American Life Insurance Company, a Michigan insurance

corporation, and of all of its assets and business wherever situated, and by virtue of the statute in such case made and provided, particularly Section 12266, Compiled Laws of Michigan for 1929, is hereby vested with title to all property, assets and business of said company wherever situated, real, personal and mixed of whatever kind or description, statutory or other deposits or pledges of securities, contracts and rights of action, * * *" (R. 97).

On November 17, 1939 the American United Life Insurance Company of Indianapolis, Indiana, entered into a written agreement with the Michigan receiver for the reinsurance of the business of the Michigan company (R. 124). The American United Life Insurance Company issued a certificate of assumption to all outstanding policyholders of the Michigan company. It took possession of all books, records, files, etc. of the Michigan company, including those pertaining to the policyholders originating in the Iowa company, and has since November 17, 1939 been collecting premiums on all outstanding policies (R. 64).

The Iowa company had fully complied with the Iowa statute at the time it reinsured its insurance business with the Michigan company in 1921. There was, however, no Iowa statute then or now requiring a similar deposit by foreign corporations. Section 8652 reads (R. 78):

> "8652—*Foreign companies—capital or surplus—investments.* No company incorporated by or organized under the laws of any other state or government shall transact business in this state unless it is possessed of the actual amount of capital required of any company organized by the laws of this state,* * * and the same is invested in bonds of the United States or of this state, or in interest-paying bonds, when they are at or above par, of the state in which the company is located, or of some other state, or in notes or bonds secured by mortgages on unincumbered real estate within this or the state where such company is located, * * * which securities shall at the time, be on deposit with the superintendent of insur-

> ance, auditor, comptroller, or chief financial officer of the state by whose laws the company is incorporated, or of some other state, and the commissioner of insurance is furnished with a certificate of such officer, under his official seal, *that he as such officer holds in trust and on deposit for the benefit of all the policyholders of such company,* the securities above mentioned. This certificate shall embrace the items of security so held, *and show that such officer is satisfied that such securities are worth one hundred thousand dollars* * * *." (italics supplied)

By this section such foreign corporations are required to possess an actual amount of capital equal to that required of any domestic company, which capital must be invested as required by the section and at the time be on deposit with the proper official of the state by whose law the company is incorporated, and the Iowa commissioner must be furnished with a certificate that such deposit is for the benefit *of all policyholders of the company* (R. 77). No other Iowa statute applies to the deposits of foreign life insurance companies.

Under Sections 12390-12391, of the Compiled Laws of Michigan, 1929, which appear as Sections 9326 and 9331 of the Compiled Laws of Michigan, 1915, (Ex. H), the pertinent portions read as follows (R. 91):

> "Sec. 4. The capital of any stock company organized under this act shall not be less than one hundred thousand dollars * * *; and no such stock company * * * shall be authorized to issue policies or assume any risk whatever until they have deposited with the state treasurer, as security for any liability to insured parties, stocks or bonds of the United States or of any state or territory of the United States, or of any city, county, village, township or school district of this state authorized by act of legislature to issue the same, or first mortgage bonds of corporations organized under the laws of the state of Michigan, to the amount in par value, exclusive of interest, of not less than one hundred thousand dollars,

> which stocks or bonds shall be retained by the state treasurer, and disposed of as hereinafter directed: * * * Provided further, That personal obligations secured by first mortgage on improved and productive real estate within this state, worth at least double the amount of the lien and bearing interest of not less than five per cent per annum, may be received by the state treasurer instead of the bonds or stock hereinbefore provided for in this section. * * *
>
> "Sec. 9. The bonds, or stocks and mortgage securities deposited by any such company with the state treasurer, shall be held by him as security for policyholders in such company; * * *".

and Section 12,377, of the Compiled Laws of Michigan, 1929, reads as follows:

> "Sec. 18. Whenever any fire or life insurance company, organized under the laws of this state and desiring to be admitted to do business in any state of the United States or in any foreign country, shall be required to make or maintain a deposit of cash or securities or both in some state for the benefit of its policyholders other than or in addition to the deposit required to be made with the state treasurer under the law of its incorporation, such other or additional deposit may be made and maintained with the state treasurer of this state. *Such deposits so made shall be held by the state treasurer as security for the policyholders of the company making the deposit* and shall be subject so far as applicable to all the provisions of law governing deposits with the state treasurer by legal reserve life insurance companies organized under the laws of this state."

As provided in the contracts, Exhibits A, B and C, securities were withdrawn from the deposit with the Iowa Insurance Commissioner by the Michigan company and securities of the same kind and character deposited in lieu thereof, but at all times the face amount of the de-

posit was in an amount equal to the legal reserves upon the policies of insurance which originated in the Iowa company as required by the contracts (R. 20). The withdrawal and substitution of securities by the Michigan company was continued to April 12, 1938, and on that date all securities, except five items of the face value of approximately $30,000.00, were substituted securities and were not a part of the deposit at the time of the execution of the contracts (R. 57). The Michigan company collected all income from the securities and handled all administrative matters connected with the securities. There were no written assignments of the securities, so only the bare physical possession was in the Iowa Insurance Commissioner (R. 57).

From 1921 to 1938 the Michigan company operated in various states of the Union, including Iowa and Michigan. Pursuant to the statutes of the several states, annual reports showing the financial condition of the company were filed with the insurance commissioners (R. 58). The Michigan company filed such reports with the Iowa Insurance Commissioner as well as the Michigan Insurance Commissioner as of December 31, 1921 to as of December 31, 1937. Except for the report of December 31, 1937, at no time did the report disclose that a part of its assets were deposited in the State of Iowa for the exclusive protection of policies originating in the Iowa company, but rather the reports stated just the contrary. As to the statement of December 31, 1937 at the examination of the company which found it insolvent, upon the insistence of the Iowa examiner, such a statement appeared in the report. No license to do business was issued upon this report in any state (R. 177).

On November 17, 1938 there were 4,313 policyholders in the Michigan company who originated in the Iowa company, representing insurance in force in the amount of $6,657,364.82. These policyholders were distributed among 41 different states of the Union, as well as Canada, Philippine Islands, Hawaii, Porto Rico, and South America. Of these policyholders 1,535 were residents of the State of Iowa, representing insurance in force in the amount

of $2,456,039.00, or 36.89% of the group. Also resident in Iowa were 1,707 policyholders who originated in the Michigan company, representing $2,315,543.70 insurance in force, which, under the theory of the respondent, are not protected by the Iowa deposit.

Upon notice of the reinsurance agreement given them by the Michigan receiver, and receipt of the assumption certificate from the American United Life Insurance Company, only 81 policyholders originating in the Iowa company dissented (R. 62). All the rest have accepted the reinsurance agreement, and look now to the American United Life Insurance Company for the fulfillment of their policy contracts. The 81 policyholders who dissented filed claims for the value of their policies with the Michigan receiver for submission to the Circuit Court for the County of Ingham, in Chancery, Michigan (R. 62).

JURISDICTION

The grounds of jurisdiction are:

(1) The date of the judgment to be reviewed is September 22, 1942, that being the date of denial of petition for rehearing with respect to judgment entered July 30, 1942.

(2) The judgment was rendered in an action between citizens of different states.

(3) The statute under which the jurisdiction is invoked is Section 240 of the Judicial Code as amended by the Act of Feb. 13, 1935.

THE QUESTIONS PRESENTED

I.

The Circuit Court of Appeals of the Eighth Circuit was in error in holding that Sections 8661-63, of the Insurance Laws of Iowa, pertaining to domestic life insurance companies, expressed the local policy of Iowa as to the rights of the domiciliary receiver of a foreign insur-

ance company as to securities deposited in Iowa; and in failing to hold that Section 8652 of the Insurance Laws of Iowa pertaining to foreign life insurance companies was the only statutory expression of Iowa local policy; and in finding that the decisions of the Supreme Court of Iowa expressed a local policy denying the domiciliary receiver of a foreign insurance company's title to securities deposited in Iowa by a foreign life insurance company in the absence of a claim of a lien by an attachment or judgment resident creditor; and in holding that the Commissioner of Insurance of Iowa had lien or trust rights in the securities for the benefit of the policyholders of the dissolved Iowa company as against the Michigan company or its other policyholders, including many Iowa residents, and contrary to the doctrine of local policy as expressed by this Court in Clark v. Williard, 294 U. S. 215, 79 L. Ed. 869.

II.

The Circuit Court of Appeals was in error:

(a) in failing to hold that all of the policyholders of the Iowa company had accepted the jurisdiction of the Michigan court by electing to take the reinsurance provided by that court or electing to come under the jurisdiction of the Michigan court for the adjudication of their claims;

(b) in holding that the condition existing on June 17, 1938 controlled instead of the date the record was made.

(c) in holding that the Michigan company was substituted for the Iowa company in the performance of the obligations of the Iowa company to its policyholders under the Iowa statutes governing domestic life insurance statutes; and

(d) in failing to hold that the domiciliary receiver succeeded to all of the rights and powers of the Michigan company.

When the record was made, the domiciliary receiver had settled the claims of all of the policyholders by pro-

viding reinsurance for all but 81 (subsequently reduced to 65). Each of the latter policyholders had elected to recognize the jurisdiction of the Michigan court by filing his claim with the Michigan receiver where claims were adjudicated. The question before the court, therefore, having become moot subsequent to the filing of the complaint.

III.

The Circuit Court of Appeals so far departed from the accepted and usual course of judicial proceedings in its opinion of July 30, 1942, as to render chaotic all receivership proceedings involving life insurance companies:

(a) by failing in its original opinion of July 30, 1942 to recognize established principles of the rights of domiciliary receivers, and in failing in its opinion of September 22, 1942 on denial of motion for rehearing to give full faith and credit to the laws of the State of Michigan placing title to all assets of the receivership in the domiciliary receiver, subject only to lien rights of resident creditors of a given state if so established by local policy, thus rendering impossible the administration of the assets of an insolvent company by the domiciliary receiver or its grantee and vendee in accordance with efficient, economical and orderly liquidation of assets of insolvent life insurance companies;

(b) in failing to definitely and directly hold, although the question was before it, that the Michigan court had jurisdiction of all the property of the trust wherever located except as to property physically located within the State of Iowa or amenable to process issued from Iowa courts on suit of resident creditors of that State if such is the local policy of Iowa.

(c) in finding that the securities in suit were deposited for sole benefit of the policyholders originating in the Iowa company in absence of evidence thereto; and in face of express provisions of contract that relate only to amount and character of the securities.

(d) in finding that, "The Michigan receiver and the Indiana company contend here that *many* of the policyholders of the old Iowa company have lost their rights to the benefits of the Iowa deposit, by the filing of claims in the Michigan receivership or by the acceptance of the reinsurance agreement made with the Indiana company," although it was stipulated in the record that *all* of the policyholders of the Iowa company had made such elections, thereby rendering the entire case moot.

REASONS RELIED UPON FOR THE GRANTING OF WRIT OF CERTIORARI

The discretionary power of this Court is invoked upon the following grounds, being those included among the grounds enumerated in Rule 38 of the Rules of this Court.

1. The Circuit Court of Appeals decided an important question of local law in a way probably in conflict with applicable local decisions and contrary to local statutes.

2. The Circuit Court of Appeals decided an important question of general law in a way probably untenable or in conflict with the weight of authority.

3. The Circuit Court of Appeals so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

WHEREFORE, your petitioners respectfully pray that this Court grant a writ of certiorari under Judicial Code, Section 240, as amended, to be issued out of and under the seal of the Court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, to remove therefrom for review here the record in the cause therein pending, No. 11852, Civil, wherein your petitioners are appellants, and the respondent appellee, and that the said opinion, judgment and decree of the United States Circuit Court of Appeals for the Eighth Circuit may be reversed by this Court, and that petitioners have such

other and further relief in the premises as to this Court may seem equitable and just.

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